

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**February 5, 2013**

Diane M. Fremgen  
Clerk of Court of Appeals

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 2012AP585**

**Cir. Ct. No. 2004CF4258**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT I**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**ALLEN BUCKNER, III,**

**DEFENDANT-APPELLANT.**

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APPEAL from an order of the circuit court for Milwaukee County:  
RICHARD J. SANKOVITZ, Judge. *Affirmed.*

Before Curley, P.J., Fine and Kessler, JJ.

¶1 PER CURIAM. Allen Buckner, III, *pro se*, appeals the order denying his motion for postconviction relief. We conclude that Buckner's challenges are forfeited by his plea. Therefore, we affirm the order.

## BACKGROUND

¶2 In 2004, incident to a plea bargain, Buckner pled guilty to first-degree reckless homicide while armed and attempted armed robbery, each as a party to the crime. *See State v. Buckner*, No. 2006AP290-CR, unpublished slip op. ¶2 (WI App July 10, 2007). The circuit court denied his postconviction motion seeking sentence modification, and Buckner appealed. *Id.*, ¶1. The only issue raised on appeal was whether the circuit court erroneously exercised its discretion during sentencing. *Id.* We affirmed the judgment of conviction and the order denying Buckner's postconviction motion. *Id.* The Wisconsin Supreme Court denied review.

¶3 In 2012, Buckner, *pro se*, moved for postconviction relief pursuant to WIS. STAT. § 974.06. Because he was not identified by witnesses, Buckner claimed that the complaint was not supported by probable cause and there was no subject matter jurisdiction. Buckner further asserted that his postconviction lawyer's representation was constitutionally deficient for not challenging his trial lawyer's representation on a number of bases. Buckner argued: (1) his trial lawyer should have sought dismissal based on the fact that the witnesses did not pick Buckner out of the lineup; (2) his trial lawyer should have challenged Buckner's warrantless arrest; (3) his trial lawyer should have argued that Buckner did not knowingly, intelligently, and voluntarily waive his right to counsel during his arrest and during the police lineup; (4) his trial lawyer should have sought a hearing pursuant to *Franks v. Delaware*, 438 U.S. 154 (1978); and (5) his trial lawyer should have objected to the circuit court's refusal to grant Buckner a hearing on his suppression motion. The circuit court examined each issue in its decision and denied Buckner's motion.

## DISCUSSION

¶4 On appeal, Buckner resurrects all of the same challenges he raised in his postconviction motion. We agree with the State that Buckner’s claims fail because, by pleading guilty, he waived—or, more precisely, forfeited—the right to appeal them. *See State v. Kelty*, 2006 WI 101, ¶18 & n.11, 294 Wis. 2d 62, 73 & n.11, 716 N.W.2d 886, 892 & n.11 (observing the general rule that a guilty plea waives all nonjurisdictional defects, including constitutional claims, but noting that “forfeiture” more accurately conveys the effect of a plea because “waiver” means an intentional relinquishment of a known right).

¶5 Buckner makes a blanket assertion that his claims are not barred by the guilty-plea-waiver rule but does not offer any analysis on this point. The closest he comes to asserting a claim that might survive is his attempt to cast the sufficiency-of-the-complaint issue as jurisdictional by focusing on the purported lack of subject matter jurisdiction. But, Buckner’s repackaging is not enough to revive this issue, which, like the others, was forfeited by Buckner’s guilty plea.<sup>1</sup> Although the guilty-plea-waiver rule is “a rule of administration and not of power,” we see no reason to deviate from it here. *See State v. Grayson*, 165 Wis. 2d 557, 561, 478 N.W.2d 390, 392 (Ct. App. 1991) (“[W]e can in our discretion review claimed error, particularly if the issues are of state-wide

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<sup>1</sup> Moreover, the circuit court would lack subject matter jurisdiction only if the crime charged is unknown in law, in other words, if it is a nonexistent crime. *See State v. Webster*, 196 Wis. 2d 308, 317, 538 N.W.2d 810, 813 (Ct. App. 1995) (“The circuit court ‘lacks criminal subject[]matter jurisdiction only where the complaint does not charge an offense known to law.’”) (citation omitted, brackets in *Webster*). Here, Buckner does not argue that the crimes charged were unknown in law. Instead, he argues that he was not responsible for them. As such, the issue is not whether circuit court had subject matter jurisdiction.

importance or resolution will serve the interests of justice and there are no factual issues that need to be resolved.”).

*By the Court.*—Order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

